

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 2207.05
COMPLAINT INVESTIGATOR: Brian Simkins
DATE OF COMPLAINT: January 20, 2005
DATE OF REPORT: February 18, 2005
REQUEST FOR RECONSIDERATION: n/a
DATE OF CLOSURE: April 5, 2005

COMPLAINT ISSUES:

Whether the Scott County School District 2 and the Scott County Special Services Unit violated:

511 IAC 7-21-2(c) by failing to provide pre-service and in-service training to the paraprofessional assigned to work with the student.

511 IAC 7-27-9(b) by failing to make available to the student the variety of educational programs and services that are made available to non-disabled students, specifically:

- (a) field trips; and
- (b) meals.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically by failing to provide a sensory program.

FINDINGS OF FACT:

1. The Student has been identified as a student with an other health impairment (OHI) and determined eligible for special education and related services.
2. The Student's case conference committee (CCC) convened on December 1, 2004. The CCC agreed that the Student needed a one-on-one aide to assist the Student and monitor behavior. A paraprofessional was hired on December 6, 2004. The Complainant helped the School interview and hire a paraprofessional to work with the Student. Upon hiring the paraprofessional the School provided a copy of the training guide for paraprofessionals (Master Teachers Series). This training guide contains a section called "Working With Students" and includes information on all areas of exceptionality for special education. The Student's paraprofessional also participated in the paraprofessional orientation held at the special education district central office on December 7, 2004, where the paraprofessional learned about the School's behavior system. An in-service on the specific needs of the Student is scheduled for February 21, 2005, with input from the Complainant.
3. The Student's IEP dated December 1, 2004, indicates that the Student is to participate in field trips. The Student's parent signed permission for the Student to attend all field trips related to the Student's program on August 17, 2004. The Student did not participate on two field trips that took place on December 9, and 10, 2004. The December 9 field trip was to go see a holiday play and the December 10 field trip was a shopping outing. December 9 was also the Student's first day back to school after being suspended. It is undisputed that the School made a recommendation to the Complainant offering the Student a part day option, with a substitute teacher, to start slowly with the new aide rather than attend the field trips. The Student's IEP does not provide for a part day schedule. The Complainant did

not want a part-day option in lieu of attending the field trips. As a result, the Complainant kept the Student at home until the following Monday, December 13.

4. The Complainant alleges that the School denies the Student lunch as punishment for certain behaviors or restricts the Student's choice of lunch lines. The Student is placed in a moderate work transition program. The program has a behavior system in which students can obtain points for good behavior and lose points for exhibiting poor behavior. Discipline reports show several incidents of poor behavior, including physical aggressiveness towards other students during lunch. As a result, at times the Student must sit at an assigned seat at lunch. The School does acknowledge at times denying the Student the privilege of going to the soft drink machines before lunch if the Student has not earned enough points through the behavior system. The Student must then drink what is provided with lunch.
5. The Student's IEP, dated December 1, 2004, states that the Student is to receive occupational therapy (OT) on an indirect consult basis for 20 minutes a trimester. The IEP includes an OT progress report, dated May 26, 2004, that describes recommended adaptations and modifications that the Student may need. These suggested adaptations and modifications are partly based on another OT report (in addition to current observations), dated November 1, 2002, which describes a sensory profile interpretation. A sensory program is not specifically written into the Student's IEP.

CONCLUSIONS:

1. Finding of Fact #2 indicates that the School did not fail to provide pre-service and in-service training to the paraprofessional assigned to work with the Student. Therefore, a violation of 511 IAC 7-21-2(c) is not found.
2. Findings of Fact #3 and #4 indicate that the School did not make available to the Student the opportunity to attend field trips. The Student did not participate on the two field trips on December 9, and 10, 2004. The Student's IEP states that the Student is to participate in field trips. Finding of Fact #3 indicates that the Student was kept at home as a result of the Complainant's disagreement with the School's recommendation to provide a part-day option with a substitute teacher and paraprofessional for the Student during the days the rest of the class was participating in the field trips. A part-day option is not part of the Student's IEP. As a result of staying home, the Student missed the opportunity to progress towards the goals in the IEP. Therefore, a violation of 511 IAC 7-27-9(b) is found with regard to the field trips. In addition, violations of 511 IAC 7-27-7(a) and 511 IAC 7-21-3 are found as a result of the Student missing two days of school and the School's attempt to unilaterally shorten the Student's instructional day respectively. A violation of 511 IAC 7-27-9(b) is not found in regard to meals.
3. Finding of Fact #5 indicates that the School did not fail to implement the Student's IEP as written with respect to a sensory program. Therefore, a violation of 511 IAC 7-27-7(a) is not found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Scott County School District 2 and the Scott County Special Services Unit shall:

Convene the Student's case conference committee meeting to determine whether and to what extent the Student shall receive compensatory services as a result of missing two days of school. The CCC must also address ways to ensure the availability of field trips for the Student when the Student's teacher, or other staff trained to deal with aggressive behavior, are not available. The School shall also provide an assurance

statement that the School will follow IEPs concerning student participation on field trips and not unilaterally determine a student should not participate (a CCC decision). A copy of the case conference report and the assurance statement shall be sent to the Division no later than March 25, 2005.